

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-115
Table of Allotments,) RM - 9378
FM Broadcast Stations.)
(Clio and Tuscola, Michigan))

To: Chief, Allocations Branch
Policy & Rules Division (Mass Media Bureau)

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**OPPOSITION TO
PETITION FOR RULE MAKING**

Comes now **The MacDonald Broadcasting Company** ("MacDonald"), by Counsel, and hereby submits these Comments in opposition to proposed reallocation of Channel 268A from Tuscola, Michigan to Clio, Michigan, as described in the Commission's *Notice of Proposed Rule Making (DA 99-677, released April 9, 1999) ("NPRM")*. In support hereof, MacDonald submits the following:

1. MacDonald is the licensee of Radio Stations WSAM-AM and WKCQ-FM at Saginaw, Michigan, and Radio Stations WILS-AM and WHZZ-FM at Lansing, Michigan.

2. The NPRM indicates that Radio Station WWBN-FM at Tuscola, Michigan seeks to relocate to Clio, Michigan. The NPRM also indicates that WWBN-FM alleges that "the reallocation will not remove service from a rural area to serve an urban area" although the reallocation will result in "service to an additional 186,714 people which represents a 110 percent increase in

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population coverage." *NPRM, at para. 2*. However, a close look at these matters reveals that WWBN-FM has not been candid with the Commission.

3. While it is true that the community of Tuscola is located within a rural area, the community of Clio is clearly within the Flint, Michigan urbanized area, as defined and described by the U.S. Census Bureau. Attached hereto as Exhibit No. 1 are two U.S. Census Bureau urbanized area maps for the Flint, Michigan area --- Clio is located within the boundaries of that urbanized area. Thus, it is not surprising that the proposed reallocation would result in an increase in coverage to 186,714 people, since that urbanized area is much more densely populated than the Tuscola rural area.

4. In light of the foregoing, the Commission must decide whether its policy in this area would be appropriately advanced by the grant of the WWBN-FM proposal. MacDonald believes that a proper application of FCC policy dictates the *denial* of the proposal. In *Modification of FM and TV Authorizations to Specify a New Community of License (Reconsideration)*, 68 *RR 2d 644 (1990)*, the Commission held as follows:

12. Consistent with longstanding practice applying these residual categories, if the Commission is presented with conflicting options, such as the option of retaining the existing arrangement of allotments or adopting a new arrangement of allotments, it will adopt the proposal which best discharges the Commission's statutory mandate. Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of

service from an underserved rural to a well-served urban area and the public interest consequences of any such change.

13. Consistent with precedent, we do not intend to apply the first local service preference of our allotment criteria blindly. We recognize that an inflexible application of that preference, without further analysis, could consistently result in our finding that a reallocation leading to first local service for a suburb of a much larger adjacent metropolitan center justifies removing a local service from a more remote community

14. It has never been Commission policy to adhere rigidly to the concept of localism if the result of that adherence is to undermine the fair, equitable, and efficient distribution of radio service mandated by Section 307(b) of the Communications Act. We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies. *Id.*, at paras, 12-14 (footnotes omitted).

5. The WWBN-FM proposal is an artificial and technical manipulation of the Commission's 307(b) policies. WWBN-FM desires to effectuate a move-in on the Flint, Michigan market at the expense of Tuscola. Tuscola will lose its only aural service. On the other hand, the Flint-Clio market is well served by at least 12 radio stations.¹ The residents of Clio receive ample radio coverage from the 12 Flint-based radio stations. Thus, the WWBN-FM proposal must be denied.

WHEREFORE, the foregoing premises considered, the WWBN-FM proposal must be DENIED since it is nothing more than a manipulative attempt

¹ The 1999 *Broadcasting & Cable Yearbook* lists the following radio stations in the Flint radio market: WCRZ-FM, WDZZ-FM, WFBE-FM, WFDF-AM, WFLT-AM, WFNT-FM, WFUM-FM, WGRI-FM, WSNL-AM, WTRX-AM, WWCK-AM and WWCK-FM. *Id.*, at page D-220.

to move-in on the Flint, Michigan urbanized area at the expense of a rural community -- all contrary to longstanding Commission policy.

Respectfully submitted,

**THE MacDONALD BROADCASTING
COMPANY**

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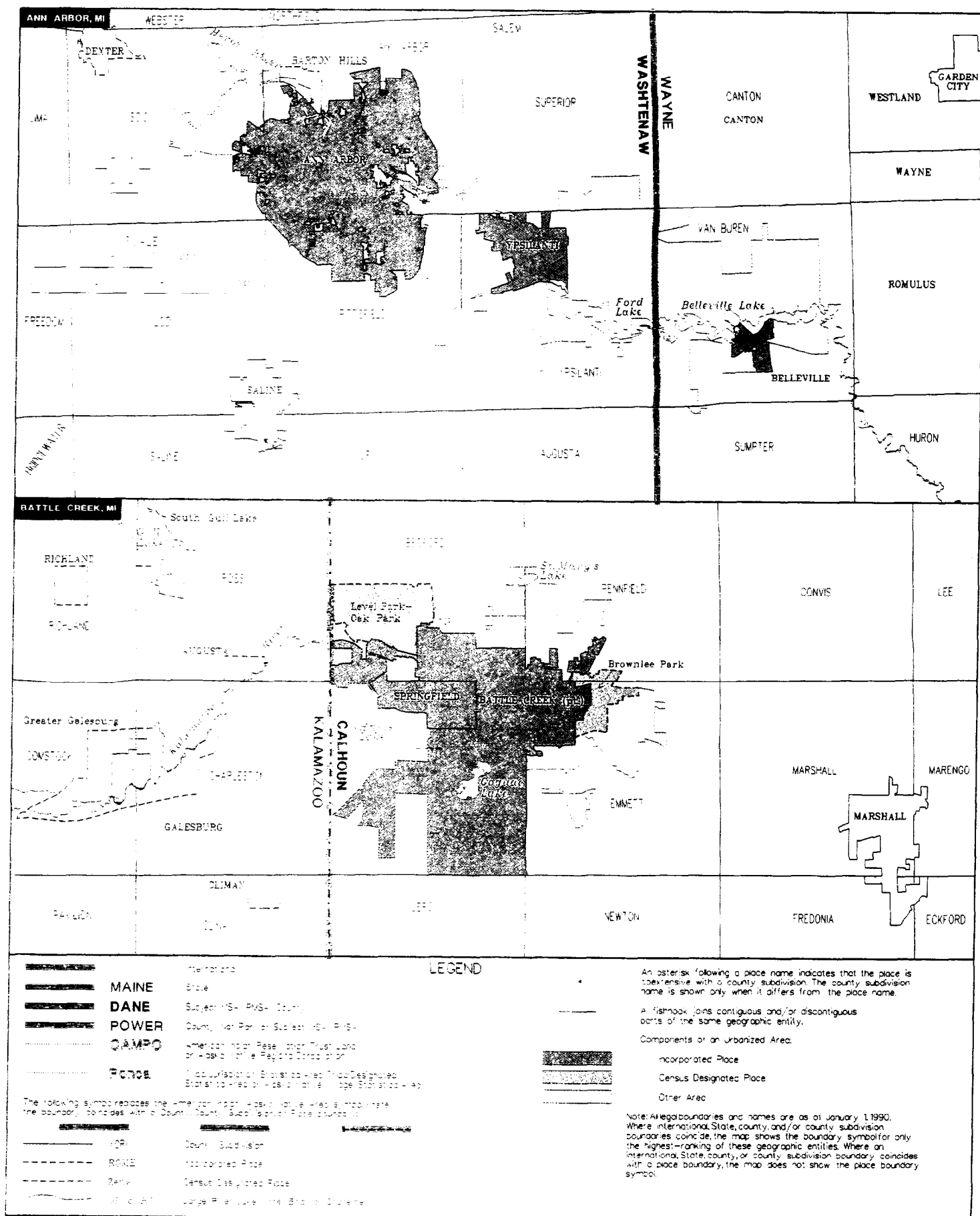
(202) 686-9600

May 28, 1999

Exhibit No. 1

(U.S. Census Bureau Maps)

Urbanized Areas



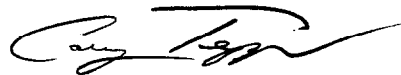
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CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 28th day of May, 1999, I have served a copy of the foregoing "**Opposition to Petition for Rule Making**" first-class, postage-prepaid, on the following:

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